

Exhibit 40

Excerpts of deposition of David Alan Johnson
(November 17, 2023)

In the Matter Of:
THE SATANIC TEMPLE
VS
NEWSWEEK DIGITAL

DAVID JOHNSON

November 17, 2023



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November 17, 2023

THE SATANIC TEMPLE vs NEWSWEEK DIGITAL

David Johnson

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----
4 THE SATANIC TEMPLE, INC.,)
5 Plaintiff,)
6 vs.) NO. 1:22-CV-01343-MKV
7 NEWSWEEK DIGITAL, LLC,)
8 Defendant.)
9 -----

10 Videotaped Deposition Upon Oral Examination

11 of

12 DAVID ALAN JOHNSON

13 -----

14 Friday, November 17, 2023

15 9:36 a.m.

16 7900 Southeast 28th Street

17 Mercer Island, Washington

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24 Cheryl Macdonald, CRR, RMR

Court Reporter

25 License No. 2498

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November 17, 2023

THE SATANIC TEMPLE vs NEWSWEEK DIGITAL

David Johnson

<p>Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 MATT KEZHAYA</p> <p>5 SONIA KEZHAYA</p> <p>6 Attorneys at Law</p> <p>7 KEZHAYA LAW PLC</p> <p>8 150 South Fifth Street</p> <p>9 Suite 1850</p> <p>10 Minneapolis, Minnesota 55402</p> <p>11 matt@kezhaya.law</p> <p>12 sonia@kezhaya.law</p> <p>13</p> <p>14 FOR THE DEFENDANT:</p> <p>15 SARA TESORIERO</p> <p>16 Attorney at Law</p> <p>17 STRACHER LAW</p> <p>18 51 Astor Place</p> <p>19 9th Floor</p> <p>20 New York, New York 10003</p> <p>21 sara@stracherlaw.com</p> <p>22</p> <p>23 FOR THE WITNESS:</p> <p>24 JEREMY E. ROLLER</p> <p>25 Attorney at Law</p> <p>ARETE LAW GROUP</p> <p>1218 Third Avenue</p> <p>Suite 2100</p> <p>Seattle, Washington 98101</p> <p>roller@aretelaw.com</p> <p>THE COURT REPORTER and VIDEOGRAPHER:</p> <p>CHERYL MACDONALD</p> <p>KALIA HENDRICKS</p> <p>MOBURG REPORTING</p> <p>33400 9th Avenue South</p> <p>Suite 207</p> <p>Federal Way, Washington 98003</p> <p>info@moburgreporting.com</p>	<p>Page 4</p> <p>1 THE VIDEOGRAPHER: Good morning. We are</p> <p>2 now on the record. This is the deposition of David</p> <p>3 Alan Johnson. This deposition is being recorded this</p> <p>4 17th day of November 2023, and the time is now 9:36</p> <p>5 a.m. Counsel and all present, please identify</p> <p>6 yourselves for the record, and then the witness may be</p> <p>7 sworn in.</p> <p>8 MR. KEZHAYA: This is Matt Kezhaya. I'm</p> <p>9 joined by Sonia Kezhaya. Appearing on behalf of the</p> <p>10 plaintiff.</p> <p>11 MS. TESORIERO: Sara Tesoriero on behalf of</p> <p>12 defendant Newsweek.</p> <p>13 MR. ROLLER: Jeremy Roller for nonparty</p> <p>14 witness David Alan Johnson.</p> <p>15 DAVID JOHNSON, the witness herein, having been</p> <p>16 placed under oath by the</p> <p>17 Certified Court Reporter,</p> <p>18 deposed and said as follows:</p> <p>19 EXAMINATION</p> <p>20 BY MR. KEZHAYA:</p> <p>21 Q. Please state your full name for the record.</p> <p>22 A. David Alan Johnson.</p> <p>23 Q. David, are you familiar with the Newsweek</p> <p>24 article for which we are here today?</p> <p>25 A. I am.</p> <p>Q. Do you understand the sole remaining</p>
<p>Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION PAGE</p> <p>4 BY MR. KEZHAYA: 4</p> <p>5 BY MS. TESORIERO: 23</p> <p>6</p> <p>7 EXHIBITS MARKED PAGE</p> <p>8 (No exhibits marked.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 statement that is at issue in this article -- go</p> <p>2 ahead.</p> <p>3 A. I am not sure.</p> <p>4 Q. Let's -- we are not going to be introducing</p> <p>5 any paper exhibits, or at least we're not anticipating</p> <p>6 doing so. Give me just a second to find it.</p> <p>7 MR. ROLLER: Can I just put something on</p> <p>8 the record that I think is going to be</p> <p>9 noncontroversial? I read the protective order that's</p> <p>10 in place in this case, and we do anticipate reviewing</p> <p>11 the transcript for confidentiality designations, and</p> <p>12 ask that it be kept confidential until that review is</p> <p>13 completed.</p> <p>14 MR. KEZHAYA: Yes. There's a 14-day period</p> <p>15 after the transcript comes out. No objection.</p> <p>16 MS. TESORIERO: No objection.</p> <p>17 Q. All right. So throughout the course of</p> <p>18 this deposition, I'm going to refer to the subject</p> <p>19 article as the Newsweek article that we're here for</p> <p>20 today, and I'm going to periodically refer to the</p> <p>21 "article statement." The statement is as follows:</p> <p>22 "Accounts of sexual abuse being covered up</p> <p>23 in ways that were more than anecdotal."</p> <p>24 Will you agree with me that that's what the</p> <p>25 article statement is?</p>

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<p style="text-align: right;">Page 6</p> <p>1 MR. ROLLER: Object to the form of the</p> <p>2 question, but you can answer.</p> <p>3 A. If you read it just now, I guess that's</p> <p>4 what it says.</p> <p>5 Q. Okay. But in terms of what you understand</p> <p>6 that when I say "article statement," that's what the</p> <p>7 article statement is; right?</p> <p>8 A. Sure.</p> <p>9 Q. You did not write the article statement;</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Jinx Strange wrote that article statement.</p> <p>13 Also correct?</p> <p>14 MS. TESORIERO: Object to the form.</p> <p>15 A. I'm not sure. I thought this was about the</p> <p>16 Newsweek article.</p> <p>17 Q. Yes. So the quote that I quoted from is</p> <p>18 from the Newsweek article, but nestled within the</p> <p>19 Newsweek article is a quote of Jinx Strange. Do you</p> <p>20 recall that?</p> <p>21 A. I recall that Jinx Strange was quoted, but</p> <p>22 I don't recall what part of it he said versus someone</p> <p>23 else.</p> <p>24 Q. Okay. Do you know whether Jinx Strange is</p> <p>25 a pseudonym?</p>	<p style="text-align: right;">Page 8</p> <p>1 TST engages in sexual abuse and cover-up. How would</p> <p>2 you define sexual abuse?</p> <p>3 MS. TESORIERO: Objection to form.</p> <p>4 MR. ROLLER: Same objection. You can</p> <p>5 answer.</p> <p>6 A. I guess I would define it as things like</p> <p>7 sexual assault, things like inappropriate sexual</p> <p>8 relationships. I'm not sure. I don't really define</p> <p>9 terms like that.</p> <p>10 Q. When you say "inappropriate sexual</p> <p>11 relationships," does that, in your mind, carry a</p> <p>12 connotation of criminal activity?</p> <p>13 MS. TESORIERO: Objection to form.</p> <p>14 MR. ROLLER: Can we just have an</p> <p>15 understanding that an objection by Sara or me is an</p> <p>16 objection of both?</p> <p>17 MR. KEZHAYA: Yes. Y'all don't have to</p> <p>18 both -- do we want to take a break?</p> <p>19 MR. ROLLER: No.</p> <p>20 Q. The question posed is whether, in your</p> <p>21 mind, an inappropriate sexual relationship connotes</p> <p>22 criminal activity.</p> <p>23 A. I would say, not necessarily.</p> <p>24 Q. How about cover-up? How would you define</p> <p>25 cover-up?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. I believe that's a pseudonym, yes.</p> <p>2 Q. Do you know where Jinx Strange is?</p> <p>3 A. I am not sure, no.</p> <p>4 Q. Beyond the e-mail address that Julia Duin</p> <p>5 e-mailed, do you have any contact information --</p> <p>6 MR. ROLLER: Object to the form of the</p> <p>7 question, but you can answer.</p> <p>8 Q. -- for Jinx Strange?</p> <p>9 A. I'm not sure. I may have a way to contact</p> <p>10 Jinx Strange.</p> <p>11 Q. How would you go about contacting Jinx</p> <p>12 Strange if not through e-mail?</p> <p>13 A. I could Facebook message him. I think</p> <p>14 that's probably what I would do.</p> <p>15 Q. Do you have a phone number for Jinx</p> <p>16 Strange?</p> <p>17 A. I do not.</p> <p>18 Q. Do you have a residential address for Jinx</p> <p>19 Strange?</p> <p>20 A. I do not.</p> <p>21 Q. Do you have a work address for Jinx</p> <p>22 Strange?</p> <p>23 A. I do not.</p> <p>24 Q. Returning your attention back to the</p> <p>25 article statement, at issue is an allegation that</p>	<p style="text-align: right;">Page 9</p> <p>1 MS. TESORIERO: Objection to form.</p> <p>2 A. Within the context of The Satanic Temple?</p> <p>3 Q. Correct. More particularly within the</p> <p>4 context of the statement, so also nested therein</p> <p>5 within the context of TST.</p> <p>6 MR. ROLLER: Object to the form. You can</p> <p>7 answer.</p> <p>8 A. I would say things like hearing about</p> <p>9 something that happens, and choosing not to address</p> <p>10 the root problem but to address the complaint, and to</p> <p>11 make the -- to treat the complaints as more of an</p> <p>12 issue than any underlying sexual abuse or harassment.</p> <p>13 Q. Would removing the offending member exclude</p> <p>14 a cover-up?</p> <p>15 MR. ROLLER: Object to the form.</p> <p>16 A. Sir, could you restate the question?</p> <p>17 Q. So within the context of this statement,</p> <p>18 there is sexual abuse and cover-up. That's the</p> <p>19 allegation. If the offending member or the person</p> <p>20 about whom the complaint is made is no longer a member</p> <p>21 of TST, is that a cover-up in your opinion?</p> <p>22 MS. TESORIERO: Objection.</p> <p>23 MR. ROLLER: Objection to form.</p> <p>24 A. I think it would depend on the</p> <p>25 circumstances, especially if a person was removed far</p>

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<p style="text-align: right;">Page 10</p> <p>1 after a complaint was made. It could be incidental. 2 They could be removed for some other reason besides 3 that. 4 Q. So if they were removed because of the 5 complaint, though, then that's not a cover-up, in your 6 opinion; is that correct? 7 MS. TESORIERO: Objection to form. 8 A. I think it depends on the particulars of 9 the situation. 10 Q. Okay. Have you personally witnessed any 11 sexual abuse within The Satanic Temple? 12 A. I have not. 13 Q. You gave an interview to Julia Duin at some 14 point previously; is that correct? 15 A. That is correct. 16 Q. During that interview you indicated -- 17 well, let's back up. I believe during that interview 18 you indicated that you were a witness to a sexual 19 harassment complaint. Do you recall that? 20 A. That sounds correct, yes. 21 Q. And when I say "I believe," I'm not sure if 22 it was you or if it was someone else. So unpacking it 23 slightly, did you indicate to Julia Duin that you were 24 a witness to a sexual harassment complaint? 25 A. I believe that is correct, yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. You say when "that was brought up." What 2 was brought up? 3 A. In 2020, when the former member, who was 4 unhappy about the way their sexual harassment had been 5 treated, talked publicly about it, as their 6 unhappiness with their treatment in the organization. 7 Q. Was this a written complaint or an 8 unwritten complaint? 9 A. I believe it was a Facebook post. 10 Q. So this was -- backing up slightly, are you 11 familiar with the concept of National Council or 12 International Council? 13 A. Within the context of The Satanic Temple? 14 Q. Correct. 15 A. My understanding is that the National 16 Council and International Council were a leadership 17 committee directly below Doug Misicko and Cevin 18 Soling, the executive committee. 19 Q. But the question posed is whether you're 20 familiar with them in the first place. So that's a 21 yes, correct? 22 A. If what I just said was accurate, then yes. 23 Q. Within your understanding, did 24 International Council or National Council investigate 25 matters of claims of sexual harassment?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. In your definition of sexual abuse, 2 whatever the sexual harassment complaint was, was that 3 sexual abuse? 4 A. I don't know that I feel qualified to say. 5 Q. Okay. Well, what was the sexual harassment 6 complaint? 7 A. There was a former member of the local 8 TST group who had been, from my understanding, 9 repeatedly made to feel uncomfortable by a much older 10 member. I think -- I think this was in a period of 11 2017 to 2018. So it was before I was a member. They 12 left because it was nonaddressed for months, and then 13 I found out about it in 2020. 14 Q. Let's unpack that slightly. You indicated 15 that you were a listed witness on a complaint; 16 correct? 17 MR. ROLLER: Object to the form. I think 18 it misstates prior testimony. 19 Q. Let me rephrase. You indicated to Duin 20 that you were a listed witness on a sexual harassment 21 complaint; correct? 22 A. I'm not -- I'm not sure. There was a 23 complaint by a person who was no longer a member. We 24 found out about it in 2020, and then that was brought 25 up. That's when I was made aware of it.</p>	<p style="text-align: right;">Page 13</p> <p>1 MS. TESORIERO: Objection to form. 2 MR. ROLLER: Object to form. 3 A. Sorry. Could you restate the question? 4 Q. In your understanding, did national -- I'm 5 just going to call it the National Council. In your 6 understanding, did National Council investigate claims 7 of sexual harassment? 8 A. I am not sure. I have heard that that's 9 so. 10 Q. Okay. But you lack personal knowledge; 11 correct? 12 A. That's correct. 13 Q. Okay. Do you have any personal knowledge 14 whether the person who claimed sexual harassment ever 15 raised a complaint to national council? 16 A. I do not know that, no. 17 Q. You indicated that you were a witness. I'm 18 having trouble understanding how you are a witness in 19 this complaint. 20 MR. ROLLER: Object to the form. 21 Q. Please help me understand that. You 22 indicated to Duin, "We were a witness", correct? 23 A. I'm not sure what the -- that's what we 24 said. If that's what the transcript is, then that's 25 what we said.</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. I did not witness the sexual harassment 2 before I was a member, that's correct. 3 Q. And have you seen any other sexual abuse of 4 any sort within The Satanic Temple? 5 MS. TESORIERO: Objection to form. 6 A. When you say that, do you mean have I 7 witnessed with my own eyes? 8 Q. Correct, yeah. You personally. 9 A. No, I don't believe so. 10 Q. Okay. So any knowledge you have would be 11 based on hearsay; is that correct? 12 MR. ROLLER: Object to the form. 13 A. Knowledge I have comes from other people 14 who experienced things, yes. 15 Q. And the information that you received from 16 other people who experienced things, did they give you 17 this information under penalty of perjury? 18 MS. TESORIERO: Objection to form. 19 A. No. 20 Q. This complaint in 2020, did you raise any 21 criminal complaints on the matter? 22 A. I did not. 23 Q. To your knowledge, were any criminal 24 complaints ever raised? 25 A. To my knowledge, no.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. So to be more particular, you personally 2 know that he was not a member of TST Washington in 3 2020; correct? 4 MR. ROLLER: Object to the form, but you 5 can answer. 6 A. That's a somewhat complicated question 7 because membership was not kept up in a particularly 8 organized way. So, to my knowledge, he was not a 9 member anymore. 10 Q. But I'm trying to ascertain -- you say to 11 your knowledge, meaning you affirmatively know that he 12 was not; is that correct? 13 A. I do not know that he was not. 14 Q. Okay. 15 A. Yeah. 16 Q. And how do you know that or -- strike that. 17 What would constitute him being a member or 18 not a member of TST Washington, in your opinion? 19 A. In my mind? 20 Q. Mm-hmm. 21 A. There were lists of people who were 22 members. However, those lists were not up to date. 23 So sometimes people who were supposedly expelled were 24 not actually, like, officially expelled, if that makes 25 sense.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. To your knowledge, were there ever any 2 criminal charges on the matter? 3 A. To my knowledge, no. 4 MR. KEZHAYA: I think we're at a good place 5 to take a break. 6 THE VIDEOGRAPHER: We're now going off the 7 record. The time is now 9:56 a.m. 8 (Recess.) 9 THE VIDEOGRAPHER: We are now back on the 10 record. The time is now 10:02 a.m. 11 Q. Do you recall the name of the person about 12 whom this 2017 sexual harassment claim was raised? 13 A. I believe I know their pseudonym. 14 Q. What is their pseudonym? 15 A. Dice Marlow. 16 Q. How do I spell Dice? 17 A. D-I-C-E, and then Marlow, I believe, is 18 M-A-R-L-O-W. 19 Q. Do you recall the name or pseudonym of the 20 person who allegedly sexually harassed Dice Marlow? 21 A. To my recollection, the pseudonym was John 22 Milton. 23 Q. Do you know whether John Milton, as of 24 2020, was still a member of TST Washington? 25 A. To my knowledge he was not.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Yeah, meaning their name was not struck 2 from some list; correct? 3 A. No. There were lists of active members and 4 supposedly expelled members, but this was not kept up 5 to date in any sort of accurate way, in my experience 6 with the organization. 7 Q. Did TST Washington have in-person events? 8 A. They did, yes. 9 Q. If John Milton showed up at one of those 10 in-person events, would he have been removed? 11 A. I am not sure. 12 Q. Would he have been welcomed? 13 A. I am not sure. 14 Q. Did you ever tell Duin that you personally 15 witnessed any form of sexual abuse? 16 A. Not to my knowledge, no. 17 Q. Did you ever tell Duin that you personally 18 witnessed any form of cover-up? 19 A. Not to my recollection, no. 20 Q. Did Duin ever ask you for any clarifying 21 details as to the ethics complaint? 22 MS. TESORIERO: Objection to form. 23 A. Not to my recollection, but if you have the 24 interview, then that would -- that should say that. 25 Q. So, in other words, if it's not in the</p>

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<p style="text-align: right;">Page 34</p> <p>1 questions.</p> <p>2 THE VIDEOGRAPHER: We are now going off the</p> <p>3 record. This marks the end of the deposition of David</p> <p>4 Alan Johnson. The time is now 10:27 a.m.</p> <p>5 THE REPORTER: Signature?</p> <p>6 MR. ROLLING: Yes. We want to read it.</p> <p>7 MR. KEZHAYA: We'll need the transcript.</p> <p>8 MS. TESORIERO: Copy, please.</p> <p>9 (Deposition concluded at 10:27 a.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 36</p> <p>1 outcome thereof;</p> <p>2 I further certify that the witness before</p> <p>3 examination was by me duly sworn to testify to the</p> <p>4 truth, the whole truth, and nothing but the truth;</p> <p>5 I further certify that the deposition, as</p> <p>6 transcribed, is a full, true and correct transcript of</p> <p>7 the testimony, including questions and answers, and</p> <p>8 all objections, motions, and exceptions of counsel</p> <p>9 made and taken at the time of foregoing examination</p> <p>10 and was prepared pursuant to Washington Administrative</p> <p>11 Code 308-14-135, the transcript preparation format</p> <p>12 guideline;</p> <p>13 I further certify that I am sealing the</p> <p>14 deposition in an envelope with the title of the above</p> <p>15 cause and the name of the witness visible, and I am</p> <p>16 delivering the same to the appropriate authority;</p> <p>17</p> <p>18 IN WITNESS WHEREOF, I have hereunto set my hand,</p> <p>19 and affixed my official seal this 30th day of</p> <p>20 November 2023.</p> <p>21</p> <p>22 _____</p> <p>23 Cheryl Macdonald, CCR</p> <p>24 Washington State Certified</p> <p>25 Court Reporter</p> <p>License No. 2498</p>
<p style="text-align: right;">Page 35</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF WASHINGTON)</p> <p>4) ss.</p> <p>5 COUNTY OF KING)</p> <p>6</p> <p>7 I, the undersigned Washington Certified Court</p> <p>8 Reporter, pursuant to RCW 5.28.010, authorized to</p> <p>9 administer oaths and affirmations in and for the State</p> <p>10 of Washington, do hereby certify:</p> <p>11 That the annexed and foregoing deposition</p> <p>12 consisting of Page 1 through 34 was taken</p> <p>13 stenographically before me and reduced to a typed</p> <p>14 format under my direction;</p> <p>15 I further certify that according to CR 30(e) the</p> <p>16 witness was given the opportunity to examine, read and</p> <p>17 sign after the same was transcribed, unless indicated</p> <p>18 in the record that the review was waived;</p> <p>19 I further certify that all objections made at the</p> <p>20 time of said examination to my qualifications or the</p> <p>21 manner of taking the deposition, or to the conduct of</p> <p>22 any party, have been noted by me upon said deposition;</p> <p>23 I further certify that I am not a relative or</p> <p>24 employee of any such attorney or counsel, and that I</p> <p>25 am not financially interested in said action or the</p>	<p style="text-align: right;">Page 37</p> <p>1 DECLARATION</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury that I</p> <p>6 have read my within deposition, and the same is true</p> <p>7 and accurate, save and except for changes and/or</p> <p>8 corrections, if any, as indicated by me on the</p> <p>9 correction sheet hereof.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 DAVID ALAN JOHNSON</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Dated this _____ day of _____,</p> <p>20 2023.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 CHERYL MACDONALD, Court Reporter</p>

